

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

SERVICE EMPLOYEES  
INTERNATIONAL UNION LOCAL  
200UNITED, and  
SERVICE EMPLOYEES  
INTERNATIONAL UNION,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United  
States of America; MARGARET  
WEICHERT, Acting Director of the Office of  
Personnel Management; and UNITED  
STATES OFFICE OF PERSONNEL  
MANAGEMENT,

Defendants.

Case No.: 1:19-cv-01073-WMS

Hon. William M. Skretny (USDJ)

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY  
INJUNCTION**

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to Federal Rule of Civil Procedure 65, and Local Rules 7 and 65 for the United States District Court for the Western District of New York, Plaintiffs Service Employees International Union Local 200United and Service Employees International Union will and hereby do move this Court for an Order granting a preliminary injunction to restrain and enjoin Defendants the United States Office of Personnel Management (“OPM”) and Margaret Weichert, in her official capacity as OPM Acting Director; and their officers, agents, subordinates, employees, and attorneys, and those persons in active concert or participation with them or acting at their or the President’s direction through his orders, from giving any effect to or otherwise taking any action to implement or enforce Executive Order No. 13,836, 83 Fed. Reg. 25329 (May 25, 2018); Executive Order No. 13,837, 83 Fed. Reg. 25335 (May 25, 2018); and Executive Order No. 13,839, 83 Fed. Reg. 25343 (May 25, 2018) (together, the “Executive Orders”).

The grounds for this Motion for Preliminary Injunction are as follows:

1. This Court should exercise its discretion to maintain the status quo pending resolution of the legality of the challenged Executive Orders, because the balance of relevant factors strongly supports entering preliminary equitable relief.

2. Plaintiffs are likely to prevail on their claims that the Executive Orders and the agency action necessary to implement these Orders are both procedurally and substantively unlawful in violation of the Administrative Procedures Act, 5 U.S.C. §553 and §706, and therefore should be: 1) held unlawful and “set aside” pursuant to 5 U.S.C. §553 and §706(2)(D) as “without observance of procedures required by law” for failure to comply with required notice-and-comment rulemaking under 5 U.S.C. §553; and 2) held unlawful and “set aside”

pursuant to 5 U.S.C. §706(2)(A) and (C) as “not in accordance with law” and “in excess of statutory jurisdiction” because the challenged Orders violate, undermine, and otherwise attempt to re-write the requirements of the Civil Service Reform Act, 5 U.S.C. §1101, *et seq.*, including the Federal Service Labor Management Relations Statute, 5 U.S.C. §7101, *et. seq.* Plaintiffs are therefore likely to succeed on their claim that implementation of these Orders by OPM and the President’s subordinate agencies at the direction of the President and OPM will violate the Administrative Procedures Act.

3. Implementation of these Executive Orders by OPM, and by federal agencies at the direction of OPM, without the notice-and-comment rulemaking required by 5 U.S.C. §553, is imminent;

4. The imminent implementation of these Executive Orders will nullify employee statutory rights and greatly upset the careful balance of federal labor-management relations created by Congress and that has been in effect for over 40 years since the CSRA was enacted in 1978, causing imminent irreparable harm to Plaintiffs and the federal employees they represent and the public interest. The harm to Plaintiffs and the employees they represent, and the public interest, cannot be corrected by later success on the merits.

5. No corresponding harm will be caused to Defendants by maintaining the status quo system of federal employee rights and labor-management relations that has been in place for over 40 years, and because Defendants have a strong interest in complying with the law.

6. The balance of hardships thus weighs strongly in favor of maintaining the status quo by enjoining implementation of these Executive Orders by OPM, and the federal agencies at the direction of OPM, pending resolution of Plaintiffs’ claims.

This motion is based upon this Notice of Motion; the accompanying Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction; Declaration of SEIU Local 200U President Scott Phillipson; Declaration of Don Woodworth; Declaration of Michelle Healy; Declaration of Danielle Leonard; Proposed Order; the complete files and records of this action; and on such other argument or evidence as may be presented at or before the time of the hearing. Pursuant to Local Rule 7(a)(1), Plaintiffs hereby give notice that they intend to file a Reply in support of their Motion.

Respectfully submitted,

Dated: September 12, 2019

By: /s/ Danielle Leonard

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